



Larry Levy  
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December 22, 2016

**VIA EMAIL AND FIRST CLASS MAIL**

Ms. Donna Rawls  
Paralegal  
Federal Election Commission,  
Office of Complaints Examination  
and Legal Administration  
999 E Street, N.W.  
Washington, D.C. 20346

Re: MUR 7151

Dear Donna:

We submit this response to your letter dated October 21, 2016, transmitting MUR 7151, on behalf of Rudolph W. Giuliani. Neither Mr. Giuliani, Donald J. Trump, Donald J. Trump for President (the "Trump Campaign"), nor the Great America PAC ("GAP") violated the Federal Election Campaign Act ("FECA"), as amended; therefore this matter should be dismissed without any further action being taken.

At the outset we note that Mr. Giuliani is not a named respondent in MUR 7151, rather the Commission staff decided to add him without regard to the fact that the sworn complaint did not name Mr. Giuliani as a respondent. At all times relevant to the complaint, Mr. Giuliani was a private citizen, a recognized expert on terrorism and national defense, and the celebrated former Mayor of New York City; he was not, as falsely alleged, an agent of the Donald J. Trump presidential campaign.

The Complaint alleges President-Elect Donald J. Trump, while a candidate for President of the United States, accepted illegal in-kind contributions from GAP, which is registered with the FEC as a hybrid PAC. Specifically, the Complaint claims political communications GAP made in July 2016 and reported as independent expenditure were actually coordinated with then-

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candidate Trump's campaign because Mr. Giuliani appeared in said ad, and was purportedly an agent of the Trump campaign at the time he made the ad. As a result of this purported coordination, the Complaint contends, the expenditures made to pay for the communications constituted in-kind contributions from GAP to Mr. Trump that exceeded the contribution limit. Because there is no basis for concluding that Mr. Giuliani was an agent of the Trump campaign at that time or that GAP otherwise coordinated its independent expenditures with Mr. Trump or his campaign, the FEC should decline to take further action.

#### **FACTUAL BACKGROUND**

In or around July 2016, GAP apparently decided to make certain independent expenditures in support of Mr. Trump's candidacy for President of the United States. As part of these expenditures, GAP requested that Mr. Giuliani, a private citizen with nationally-recognized expertise in national security and leadership issues, appear in an ad and sign a fundraising message that focused on leadership and defense of the United States. Because of Mr. Giuliani's success as Mayor of New York City and recognized expertise on national security issues, GAP advised Mr. Levy and Mr. Giuliani that they were requesting Mr. Giuliani's permission to have the e-mail distributed over his "signature," and sought to record him reading the script so audio and video excerpts could be incorporated into GAP's publicly distributed political advertisements. Both the advertisement and the fundraising email focused on the need to combat domestic terrorism, as noted a topic with which Mr. Giuliani was closely identified. GAP was exclusively responsible for preparing a draft e-mail, as well as a script for the audio recording. See Letter from Dan Backer, Counsel for Great America PAC, to Larry Levy, Counsel for Rudy Giuliani (July 25, 2016) (attached as "Exhibit 1") (hereafter, "Backer Letter"). The advertisements identified Giuliani solely as a "former Mayor of New York City," and neither stated nor implied that he had any relationship with Mr. Trump or the Trump campaign.

Mr. Giuliani played no role whatsoever in determining the audience for GAP's intended communications; he did not contribute to decisions relating to the timing, method, means, mode, outlets, duration, frequency, or any other aspect of their distribution. *Id.* Mr. Giuliani reviewed

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a copy of the draft e-mail GAP had prepared, making only a few “minor, incidental, non-substantive changes in wording, as well as correcting two typographical errors.” *Id.*; see Draft E-mail (attached as “Exhibit 2”); Affidavit (attached as “Exhibit 3). These “de minimis changes” resulted in “no meaningful change to the content of the communications” GAP prepared. Specifically, the changes included: (i) correcting a spelling error, (ii) correcting a factual error, (the length of time he has known Mr. Trump), and (iii) replacing the general phrase “our enemy” with the phrase, “radical Islamic terrorism”. I note Mr. Giuliani had previously objected, and continued to object, to the fact that neither President Obama nor Secretary Clinton would use the descriptive phrase “radical Islamic terrorism” when referring to the enemy that has killed thousands of innocent Muslims and American citizens of all backgrounds. The use of this phrase had nothing to do with the Trump campaign; it had been a point of contention referenced by Mr. Giuliani years before Mr. Trump became a candidate for President, and continues to this date. See, e.g., articles from 2007; 2013, and 2015 (attached as “Exhibit 4”); see also Exh. 1 & 3. Mr. Giuliani permitted GAP to distribute the e-mail, over his signature, to whichever recipients it wished; he didn’t participate in any discussions concerning its distribution strategy. He likewise agreed to make the requested recordings, but did not participate in any discussions concerning GAP’s strategy for their use. GAP subsequently disseminated the e-mail over Mr. Giuliani’s signature, as well as advertisements that included the audio and video clips he had recorded, without any further input from Mr. Giuliani.

Mr. Giuliani assisted with GAP’s communications solely in his personal capacity, as a volunteer, and without any actual or implied authority from the Trump campaign. See Exh. 1 & 3.) Mr. Giuliani never stated, implied, or led anyone involved in these communications to believe “he had any authority—actual or implied—to act on behalf of or as an agent of any campaign.” *Id.* Moreover, no one who participated in developing the communications had any reason to believe that Mr. Giuliani was, or was acting as, an agent for Mr. Trump or the Trump campaign. Mr. Giuliani is a prominent figure both internationally and the Republican Party; as a result, he routinely appears in political communications in his personal capacity to advocate the election of Federal, state, and local candidates precisely because he is such a trusted and respected figure, particularly concerning national security and questions of leadership. Finally,

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Mr. Giuliani neither possessed nor conveyed any relevant non-public information from Mr. Trump or the Trump campaign to GAP. *Id.*

### **LEGAL BACKGROUND**

Hybrid committees such as GAP have a fundamental First Amendment right to make unlimited independent expenditures. *See Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011); *see also SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc). An expenditure that is “coordinated” with a candidate, a candidate’s campaign, or their agents does not qualify as “independent”; rather, it is treated as an in-kind contribution to that candidate. 52 U.S.C. § 30116(a)(7)(B)-(C). An expenditure is deemed to be “coordinated” if it is made “in cooperation, consultation, or concert[] with, or at the request or suggestion of, a candidate” or the candidate’s authorized committee or agents. *Id.* § 30116(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a) (specifying references to candidates or authorized committees include their agents, as well).

FEC regulations implement this definition by establishing a three-prong test for determining whether an expenditure made to fund a communication must be deemed coordinated. It is critical to note that all three prongs of the test must be met to find that a communication was coordinated. *First*, the communication must be paid for by someone other than the candidate, his or her campaign committee, or a political party committee. 11 C.F.R. § 109.21(a)(1). The requirement was satisfied here because GAP paid for the communications at issue. *Second*, the communication must satisfy a “content” standard, *id.* § 109.21(a)(2), which is likewise satisfied here because the communications at issue clearly “expressly advocate[d] . . . the election . . . of a clearly defined candidate,” Donald J. Trump. *Id.* § 109.21(c)(3).

*Third*, the expenditure must satisfy a “conduct” standard. *Id.* § 109.21(a)(3). A communication is deemed coordinated if, among other things, either the candidate or his authorized committee or agents are “materially involved” in decisions concerning the communication, including its content, intended audience, means or mode, timing or frequency, size or prominence, duration, or the specific media outlet to be used for it. *Id.* § 109.21(d)(2); *see also id.* 109.20(a) (including candidates’ agents within scope of regulations). Because Mr.

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Giuliani's participation in GAP's advertisement did not satisfy this "conduct" standard, it was not coordinated, was properly reported as an independent expenditure, and cannot be deemed an in-kind contribution. The FEC should therefore dismiss the Complaint because the standards for establishing a coordinated communication were not met.

### **ANALYSIS**

#### **THERE IS NO REASON TO BELIEVE THAT GAP'S ADVERTISEMENT WAS COORDINATED**

The Complaint offers no reason to believe Mr. Giuliani's participation in GAP's political communications satisfy the "conduct" standard for being deemed "coordinated." *See* 11 C.F.R. § 109.21(d)(2). The Complaint does not and could not truthfully allege that any internal, confidential, or material non-public information from the Trump campaign was used by Mr. Giuliani in crafting GAP's communications. Its only basis for suggesting the advertisement was coordinated is the fact that it featured Mayor Giuliani making statements concerning Mr. Trump, President Barack Obama, and Secretary Hillary Clinton. Compl. 3. The Complaint rests entirely on the incorrect premise that Mr. Giuliani was, an "agent" of Mr. Trump and his campaign." *Id.* at 4. It is worth noting that with the exception of one news article used to support the allegations in the complaint—the only alleged facts in support of said Complaint—were written after Mr. Giuliani participated in the GAP ads. For example, the very first article cited in the Complaint's footnote 2—which was written by Ken Kurson and noted that Mr. Giuliani took a leave of absence from his law firm to assist Mr. Trump—was dated October 5, 2016, almost three months after the subject ad was created. The other articles all relate to matters occurring in late August or September of 2016, without regard to the fact that the Complaint clearly acknowledged the subject ad was created in July of 2016. *See* Compl. at 3. And the one article that predates the July ad, did not come close to establishing Mr. Giuliani as an authorized agent of the Trump campaign, indeed, at the time, February of 2016, Mr. Trump was not yet the nominee. In fact, on April 19, 2016 Mr. Giuliani told Newsmax, while referring to the Trump campaign, "I'm not a surrogate. They haven't asked me to do anything. I'm not involved in the campaign. I'm not

called upon to give advice, except a few times when I volunteered it. I'm not part of the campaign apparatus. I don't want people to think I am."<sup>1</sup> See further, Exh. 3 (Giuliani affidavit stating he wasn't an agent of the campaign, had no confidential campaign information to share, and participated in his personal capacity as a citizen). It appears that Ms. Brazile only included articles she thought would support her tortured argument, without regard to their date and ignored evidence demonstrating the absence of merit to said Complaint.

Part I demonstrates the Complaint provides no reason to believe Mr. Giuliani was an agent of Mr. Trump. Part II elaborates that, even if one were to incorrectly believe Mr. Giuliani was an agent of the campaign for some purposes, nothing in the Complaint approaches proof that he had actual authority to act on the campaign's behalf with regard to communications by third parties. Part III shows, regardless of whether or not Mr. Giuliani could be deemed an agent of Mr. Trump, he did not act in that capacity when assisting with GAP's advertisement, but rather solely in his personal capacity. For these independently sufficient reasons, GAP's expenditure was not coordinated. The FEC therefore should dismiss the Complaint.

**I. THE COMPLAINT PROVIDES NO REASON TO BELIEVE  
GIULIANI WAS AN AGENT OF THE TRUMP CAMPAIGN**

Mr. Giuliani's involvement in GAP's communications did not cause GAP's expenditures for those communications to be coordinated with the Trump campaign, because Mr. Giuliani, as demonstrated above, was not an agent of the Trump campaign. FEC regulations define "agent" as "any person who has actual authority, either express or implied," to engage in one or more specified activities concerning communications.<sup>2</sup> 11 C.F.R. § 109.3(b); see also FEC, *Definitions*

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<sup>1</sup> Newsmax, April 9, 2016

<sup>2</sup> Specifically, a person is an agent of a candidate if he has actual authority to:

- Request or suggest that a communication "be created, produced, or distributed;"
- Make or authorize communications containing certain content;
- Request or suggest that any person "create, produce, or distribute any communication;"
- Be materially involved in decisions regarding the contents, intended audience, means or mode, timing or frequency, size or prominence, duration, or specific media outlets to be used;
- Provide material or information to assist another person in creating, producing, or distributing any communication;

of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4,975, 4,977 (Jan. 31, 2006) (explaining the coordination regulations "define[] agents as individuals with actual authority to request, make, or be materially involved with the production of certain types of communications"). Whether an agent has such actual authority "is within the control of the principal." 67 Fed. Reg. at 49,083. A principal "may not be held liable" for the acts of a third party unless "the principal's own conduct reasonably causes the agent to believe that he or she had authority" to perform them. *Id.*

Mere apparent authority "is not a sufficient basis for agency" under this definition. *Id.* The FEC "intentionally avoid[ed] promulgating a regulation based on apparent authority, . . . because such authority is often difficult to discern and would place the definition of 'agent' in the hands of a third party." *Id.*; see also 71 Fed. Reg. at 4,978 ("[I]nclusion of apparent authority in the Commission's definitions of 'agent' is not necessary to implement BCRA . . ."); cf. FEC, *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 Fed. Reg. 49,064, 49,081-82 (July 29, 2002) (noting the definition of agent "make[s] clear" that it does not include a person who lacks actual authority to act on behalf of a candidate, but rather possesses only "'apparent authority' to do so").<sup>3</sup>

The Complaint provides no basis for concluding Mr. Giuliani possessed "actual authority" or even apparent authority to take action on the Trump campaign's behalf in July 2016, when he recorded the scripts to be used in GAP's challenged communications. The Complaint alleges Mr. Giuliani is a "close advisor to President-Elect Trump with a 'prominent role' in the Trump campaign." Compl. at 2 & n.2. As noted above is, this is assertion is largely based on matters reported well after the GAP ad was completed. Mr. Giuliani and Mr. Trump

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- Make or direct a communication created, produced, or distributed using material or information derived from a substantial discussion about the communication with a different candidate.

11 C.F.R. § 109.3(b).

<sup>3</sup> In its explanation of its coordination regulations, FEC, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 423 (Jan. 3, 2003), the FEC explained that 11 C.F.R. § 109.3's definition of agent "is based on the same concept that the Commission used in framing the definition of 'agent' in the revised 'soft money' rules" at 11 C.F.R. § 300.2(b). The FEC discussed the definition of agent in its soft money rules at 67 Fed. Reg. at 49,081-82.

allegedly spoke three times in February 2016, and Mr. Giuliani purportedly assisted Mr. Trump in unspecified ways to prepare for the presidential debates. *Id.* at 2 & n.4-5. Citing newspaper articles that postdate the ad in question, the Complaint claims Mr. Giuliani has also served as a surrogate for Mr. Trump on the campaign trail—without explaining the nature, timing or frequency of these purported responsibilities—and assisted in unspecified ways in developing unidentified campaign policies. *Id.* at 3. Based on these vague contentions derived solely from press reports that mostly post date, the Complaint it declares the ads in question somehow support the proposition that Mr. Giuliani “has authority to suggest to the Trump campaign that a communication be created, to be involved in decisions regarding Trump communications such as content or intended audience, and to provide material or information in creating Trump communications.” *Id.* at 4-5. Moreover, the above quote from Mr. Giuliani—offered well after the February article cited in the Complaint—and Exhibit 3 clearly stated he was not an agent or surrogate of the campaign; rather, at most, he made some suggestions to Mr. Trump based on his own well developed views of the world.

The FEC should reject the Complaint’s baseless declaration that Mr. Giuliani was an agent for the Trump campaign. As an initial matter, the Complaint is based on a fundamental misunderstanding of the regulatory definition of “agent.” FEC regulations provide a person may qualify as an agent if they have “actual authority” to “[r]equest or suggest,” “on behalf of” the candidate “a communication be created, produced, or distributed.” 11 C.F.R. § 109.3(b)(1). The requirement that the potential agent must act on behalf of the candidate strongly suggests the requests or suggestions must be made to third parties, not to the candidate himself or the candidate’s campaign. Thus, the Complaint’s allegation that Mr. Giuliani “has authority to suggest *to the Trump campaign* that a communication be created” is not only false, but completely irrelevant. Compl. at 4-5 (emphasis added). The issue is whether Mr. Giuliani had authority to act on Mr. Trump’s behalf with regard to third parties, which he did not. Indeed, literally anyone may suggest to a candidate a particular communication be created; such suggestions, of course, do not give rise to an agency relationship.



In any event, as the Complaint itself expressly acknowledges, Mr. Giuliani is “a close personal friend” of Mr. Trump. Compl. at 2 (quotation marks omitted); a friendship Mr. Giuliani noted in the ad that has existed for some 29 years, independent of any federal campaigns for office. That Mr. Giuliani may have spoken with Mr. Trump and offered him advice does not mean either Mr. Trump or the Trump campaign conferred “actual authority” on him to take actions on their behalf. 11 C.F.R. § 109.3. The Complaint is completely devoid of any factual support or citation to evidence for its conclusory assertion that Mr. Giuliani had authority to suggest communications, be involved in decisions regarding such communications, or provide information material to creating them.

This case is similar to *Iverson*, A.O. 2007-05 (May 4, 2007). Erik Iverson was Chief of Staff to Congressman Dennis Rehberg, a federal candidate. His responsibilities included managing “the Congressman’s schedule, personnel matters, and the [congressional] offices’ budgets.” *Id.* at 1. Despite these connections, however, he was not found to have been an employee or agent for the purposes of Congressman Rehberg’s campaign. He had “received no express instruction from Congressman Rehberg . . . that he is the Congressman’s agent for fundraising purposes, nor has the Congressman’s conduct caused Mr. Iverson to believe that he is the Congressman’s agent for such purposes.” *Id.* at 2. Consequently, the FEC properly concluded Iverson was not Rehberg’s agent, and BCRA provisions governing agents of federal candidates therefore did not apply to him when he engaged in fundraising activity in his individual capacity. *Id.*

Likewise, here, there is no actual evidence supporting the Democratic National Committee’s baldfaced, self-serving assertions that Mr. Giuliani either received express instructions from Mr. Trump that he was Mr. Trump’s agent concerning third-party political communications, or that Mr. Trump engaged in any conduct that caused Mr. Giuliani to believe he was Mr. Trump’s agent for such purposes. And Mr. Giuliani never claimed “he had any authority—actual or implied—to act on behalf of or as an agent of any campaign.” Backer Letter at 1, Exh. 1; *see also* Exh. 3.

GAP did not invite Mr. Giuliani to read the scripts for its political communications—which focused on the need to combat domestic terrorism—due to any baseless misconception that Mr. Giuliani was an agent of the Trump campaign. Rather, GAP sought to enhance the credibility of its communications by drawing upon Mr. Giuliani's stature as the former Mayor of New York City, who helped shepherd the city through the aftermath of the 9/11 attacks and bore ultimate responsibility for its counterterrorism strategy. Mr. Giuliani ultimately agreed to participate because he agreed with the message GAP asked him to express. Thus, because the Complaint provides no reason to believe Mr. Giuliani was an agent of the Trump campaign, the FEC should dismiss it.

**II. EVEN IF GIULIANI WERE AN AGENT OF THE TRUMP CAMPAIGN FOR SOME LIMITED PURPOSES, THE COMPLAINT PROVIDES NO REASON TO BELIEVE HE HAD ACTUAL AUTHORITY TO ACT ON THE CAMPAIGN'S BEHALF REGARDING COMMUNICATIONS BY THIRD PARTIES**

In the alternative, even if the FEC finds reason to believe Mr. Giuliani may have been an agent of the Trump campaign for some purposes, the Complaint offers absolutely no such reason to believe Mr. Trump or the campaign had granted him "actual authority" to take actions or make decisions concerning political communications by third parties such as GAP. 11 C.F.R. § 109.3. A person is deemed an agent only when acting within "the scope of their actual authority" conferred by the principal. FEC, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 424 (Jan. 3, 2003) ("[A] principal would not assume 'liability' for agents who act outside the scope of their actual authority . . ."); *Rory Reid*, A.O. 2003-10, at 4 (June 16, 2003) (reiterating a person is an "agent" only when he "is acting pursuant to 'actual authority' from the Federal candidate"). A person cannot be an agent of a candidate with regard to actions of a type he has not been given actual authority to perform on the candidate's behalf.

As discussed above, the Complaint contends only that Mr. Giuliani spoke with his long-term friend Mr. Trump, offered advice, may have helped him prepare for debates, and sometimes spoke publicly in support of Mr. Trump. Moreover, the majority of the third party stories used to support the complaint demonstrate that most of those activities occurred after Mr. Giuliani completed the ad in question. Nothing in the Complaint identifies any actions the Trump

campaign took to confer actual authority on Mr. Giuliani to request, suggest, make, authorize, or be "materially involved" in decisions concerning political communications by third parties. 11 C.F.R. § 109.3(b). And, Mr. Giuliani has completely refuted any such suggestion. Exh. 3 Because the communications in question are beyond the scope of any actual authority the Complaint's ill framed allegations could be read as supporting, he could not have been acting as an agent when he participated in GAP's communications.

**III. GIULIANI DID NOT PARTICIPATE IN GAP'S ADVERTISEMENT  
AS AN AGENT OF THE TRUMP CAMPAIGN**

Even if the FEC finds reason to believe Giuliani had the power to act as an agent of the Trump campaign, he participated in GAP's advertisement solely in his personal capacity, rather than as an agent of the campaign. *See* Exh. 1 & 3). The FEC has recognized that when a person qualifies as an agent of a principal such as a candidate or political party, that person still retains the capacity to act outside the scope of that agency relationship. Under FEC regulations, a person is treated as an agent, and his conduct will be attributed to the principal, only when he "act[s] on behalf of the principal," 67 Fed. Reg. at 49,083, rather than on his own behalf or "on behalf of a different organization or person," 68 Fed. Reg. at 424; *Sen. Jon Corzine*, AO 2005-02, at 10 (Apr. 22, 2005) ("[A] principal may only be held liable under BCRA for the actions of an agent when the agent is acting on behalf of the principal."). A person may act at certain times as an agent for a candidate, and at other times in his personal capacity or as an agent for some other principal. A.O. 2003-10, at 5 (June 16, 2003); *accord* A.O. 2007-05, at 4; *see also Senate Majority PAC*, A.O. 2015-09, at 7 (Nov. 13, 2015) (concluding an individual is deemed an "agent" subject to BCRA's soft-money restrictions "only when acting on behalf of a candidate, officeholder, or party committee," and not when "act[ing] in their own capacities" or "on behalf of other organizations").

"[I]t is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal." 68 Fed. Reg. at 424. This limitation "ensures that liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts for the

principal.” *Id.* In short, a person can “wear multiple hats,” and is not deemed an agent when acting in an individual capacity or on behalf of another principal. *Id.*

Here, Mr. Giuliani appeared in GAP’s advertisements solely in his personal capacity. As former Mayor of New York City, he is a world-renowned authority on counter-terrorism and on leadership, and he is regularly sought out by the media to comment on these topics. *See* Exh. 4. GAP’s advertisements concerned counter-terrorism and leadership. Mr. Giuliani is—and has been for many years—an extremely credible and persuasive authority on the topic, regardless of any purported and unproven links with the Trump campaign. Like numerous other Presidential, House and Senate candidates, GAP sought to draw upon Mr. Giuliani’s personal reputation and expertise to enhance the efficacy of its communications, not to exploit any purported relationship with the Trump campaign. Because Mr. Giuliani was acting solely in his personal capacity, GAP’s communications cannot be deemed coordinated.

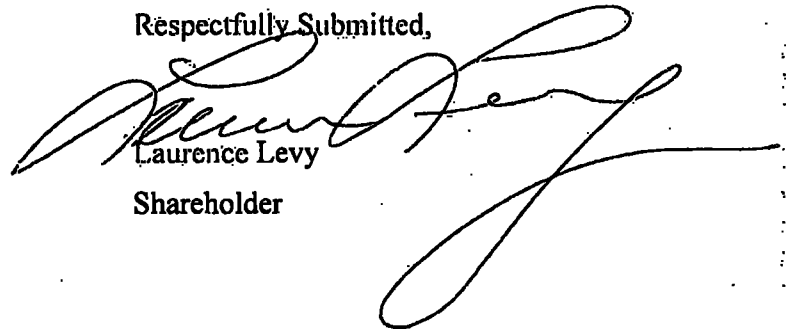
Again, *Iverson*, A.O. 2007-05, is directly on point. The FEC recognized that, if Congressman Rehberg “provide[d] Mr. Iverson with actual authority to solicit and receive contributions, then Mr. Iverson would be an agent of a Federal candidate.” *Id.* at 4. BCRA prohibits agents of federal candidates from soliciting any money, including non-federal funds, in excess of the statute’s contribution limits. *See* 52 U.S.C. § 30125. The FEC nevertheless concluded Iverson could simultaneously serve as chair of the state party and solicit unlimited contributions for the party’s non-federal account, so long as he did not do so in his capacity as Rehberg’s agent. A.O. 2007-05, at 4. Here, Mr. Giuliani was abundantly clear he was not purporting “to act on behalf of[,] or as an agent of[,] any campaign” when he participated in GAP’s political communications. *See* Backer Letter at 1, Exh. 1; *see also* Exh. 3. He therefore was acting solely on his own personal behalf, engaging in his “core” constitutional right to quite literally engage in political speech. *Buckley v. Valeo*, 424 U.S. 1, 48 (1976) (per curiam). Because he did not assist with GAP’s political communications as an agent of the Trump campaign, those communications cannot be deemed coordinated.

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**CONCLUSION**

For these reasons, the FEC should not find reason to believe Mr. Giuliani, Donald J. Trump for President, Inc., GAP, or Backer violated any federal campaign finance restrictions, and the Complaint should be dismissed.

Respectfully Submitted,

A large, stylized handwritten signature in dark ink, likely belonging to Laurence Levy, is written over the typed name and title.

Laurence Levy

Shareholder

LL:ep  
Attachments  
NY 246266304v1

**EXHIBIT 1**



**DB CAPITOL  
STRATEGIES**

PAC • CAMPAIGN • NON-PROFIT • POLITICAL LAW

July 25, 2016

Dear Mr. Levy,

I write on behalf of my client, Great America PAC, with respect to its interactions with your client, former Mayor Rudy Giuliani, as to (1) your client signing certain email copy and (2) your client making certain audio recordings, both of which my client has created.

In my capacity as counsel to, and Treasurer of, my client, I personally and exclusively oversaw a third party vendors' preparation of copy presented to your client for his signature. No other person, including your client, was involved in any way with creating the content of this communication, determining the audience for this communication, when and how it will be disseminated, and with what timing and frequency.

My client, as is the normal and ordinary custom of trade when asking any third party to affix its name to email copy, provided your client with the copy that he was being asked affix his name too. As you can see from the attached draft, your client made only minor, incidental, non-substantive changes in wording, as well as correcting two typographical errors before signing. These de minimis changes made no meaningful change to the content of the communication previously prepared, and in no way impact the pre-existing strategy of distribution, nor was the distribution strategy discussed with your client.

With respect to the audio recordings made by your client, in my capacity as counsel to, and Treasurer of, my client, I personally and exclusively oversaw multiple third party vendors in consolidating various audio segments my client requested your client record for use in various ways. No other person, including your client, was in any way involved in the creation of the various audio segments, or in determining when, where, and how each component segment will be used.

I exercised regular and customary oversight of these activities and the personnel involved, both in my capacity as the Treasurer bearing ultimate legal liability and as their legal counsel to insure strict adherence to the Federal Election Campaign Act, as amended, and applicable rules and regulations of the Federal Election Commission. I can also assure you that I have taken great pains to rigorously educate my client personnel as to permissible and impermissible activities under 11 CFR 109.21.

I can assure you at no time did your client express, imply, or in any way lead my client or anyone involved in these activities to believe he had any authority – actual or implied – to act on behalf of or as an agent of any campaign. Moreover, I can assure you your client was not involved in drafting either communication.



**DB CAPITOL  
STRATEGIES**

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Further, after exhaustive internal review, I can assure you your client was never consulted with, did not provide any suggestions as to, and was in general in no way involved in any discussion or decisions made with regards to when and how these communications would be distributed, including means, mode, outlets, duration, frequency, or any other element of the paid distribution of this communication by any means.

Regards,

*/s/ Dan Backer, Esq.*

Treasurer, Counsel, Great America PAC

Principal Attorney, DB Capitol Strategies PLLC



18044450

%%FIRST%%,

In the wake of barbaric Islamic terrorist attacks in Paris, Brussels, Istanbul, Fort Hood, Chattanooga, Boston, San Bernadino and now Orlando, the time has come for the people of this great country to stand up to this unprecedented evil that threatens to take our lives and destroy our way of life. This is a war on America.

As the US prosecutor who took down some of New York City's most notorious crime families, and as the Mayor of New York City on that fateful September day almost 15 years ago, I've lived this firsthand.

**We can no longer sit by as our country inches closer to the point of no return.**

Keeping this country and its citizens safe *must be the first priority for America's next President* -- and let me assure you, **it will not happen if Hillary Clinton is allowed to continue the disastrous policies of the Obama administration.**

It can only happen if **Donald Trump** is given the chance to bring commonsense and backbone to the Oval Office. He is the only candidate who has *consistently shown the leadership and necessary resolve* to handle the overwhelming pressure that comes with being President of the United States. And he is the only candidate who will step up and stand tough in the face of adversity.

America needs a leader who will face down our enemy. America needs a leader who isn't afraid to say the words "Radical Islam." And America needs a leader who doesn't outright deceive the American people when four Americans are murdered on their watch.

*Radical Islamic terrorist*

*terrorism*

*Support* So I call on you to please join me in supporting Great America PAC's efforts *on* behalf of the Donald J. Trump campaign to defeat Hillary Clinton and bring leadership to the White House. We cannot afford to have a Commander-in-Chief who sleeps through desperate calls from Americans under attack. We must demand a leader will do everything in their power to Make This Country Great Again.

**Will you step forward and make a generous contribution of \$25, \$50, \$100 or more** so that Great America PAC can continue to ~~support~~ Donald Trump's bid for the Presidency?

*Support*

This country needs leadership now more than ever. **Donald Trump will give us that leadership.** And his leadership is what brings me to write to you today.

Together, we can and will move forward out of this dark time of dithering and lack of resolve. But only if this country has a leader and a fighter in the Oval Office.

Now we must fight to give him that chance. Please **make your generous contribution supporting Great America PAC today.**

Sincerely,

*Rudy Giuliani*  
Rudy Giuliani

Former Mayor of New York

Proud Supporter, Great America PAC

P.S. As the former Mayor of New York City, I know that Donald Trump is the right man for the job. Donald Trump has been my friend for more than 25 years and I trust him. As an American, I hope that you will, too. **Please chip in \$25 or more so that we can show the world America will lead once more.** Thanks, Rudy

*Rudy Giuliani*

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**EXHIBIT 3**

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 7151

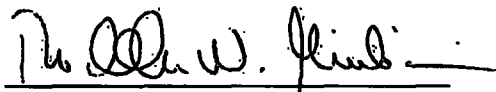
STATEMENT OF RUDOLPH W. GIULIANI

This statement is made in support of the response to MUR 7151 ; it is provided to the best of my recollection in an effort to clarify certain misleading and false accusations contained in the Complaint filed that resulted in MUR 7151.

1. In July of 2016, around the time of the scheduled Republican National Convention I was approached by Mr. Menges and Mr. Beach of the Great American PAC and asked if would agree to do an ad for said PAC.
2. They asked if I could do a video ad and possibly a written ad seeking funds to support their Super PAC, which in turn was supporting the Republican nominee for President of the United States, Donald J. Trump.
3. Mr. Menges who had worked for me for many years, both when I was the Mayor of New York City, and in private practice was well aware of my views on the dangers of radical Islamic terrorism, and the failure of President Obama and Secretary Clinton to effectively recognize same and address it appropriately. He was also well aware of my expertise and views on the need to defend the United States and on leadership in general.
4. I then discussed with my partner and counsel, Larry Levy if I would be permitted to do an ad for a Super PAC. I advised Mr. Levy that I would do so as a private citizen, that I was not an agent or surrogate for the Trump campaign, and was not privy to any confidential information relating to the subject matter of the ad, or of the Trump campaign strategy for promoting its message.
5. When I met with Mr. Menges and Mr. Beach, they showed me a script for a video ad and the text of a written ad. They did not discuss with me how they would promote the ads, how much they would spend promoting the ads, what medium they would use, or what audience they would attempt to engage.
6. I read the ads, made some minor edits, which were either grammatical or factual, such as changing the number of years I have been a friend of Donald Trump's from 25 years to 29 years, and changed the term enemy to the term radical Islamic terrorists. I had not seen the ads prior to that date, nor had I discussed the specific message in the ads.

- 18004474001
7. I had on many occasions in recent years used the term radical Islamic terrorists, as well as criticized President Obama and Secretary Clinton for refusing to appropriately use the term.
  8. I then again reviewed the above facts and circumstances with Mr. Levy, who advised that since I was acting in my personal capacity, did not determine the audience or method of disseminating the message, was not an agent of the Trump campaign, and did not possess or convey any private information regarding it's messaging strategy from the Trump campaign, that it would be permissible to sign-off on the ad.
  9. I note I wasn't compensated for doing the ad, rather I did it as a volunteer because it represented my personal views, including the view that a President Trump would keep America safe from radical Islamic terrorists.
  10. Sometime subsequent to doing the ad I became more involved in the Trump campaign, and, as a surrogate for Mr. Trump, often traveled with him and even took a leave of absence in October of 2016 from my law firm, to help elect Mr. Trump. However, prior to the ad in July of 2016, I was not an agent of the campaign, rather I was simply a longtime friend of the candidate who shared my views with him both publicly and privately.

I declare under penalty of perjury that the foregoing is true and correct.



Rudolph W. Giuliani

December 21, 2016

## **EXHIBIT 4**

# BERKLEY CENTER

for Religion, Peace & World Affairs

(7)

## RESOURCES on Faith, Ethics & Public Life

[\(/resources\)](#)

### Rudy Giuliani on Distinguishing between Islam and Islamic Terrorism in the St. Petersburg Republican Presidential Debate

November 28, 2007

Well, the most important thing to do is to make certain we remain on offense against Islamic terrorism. And then make it clear that what that means is this is a small group of people, Islamic terrorists, who have defiled a great religion, that the vast majority of people who are Islamic [...] are good people. [...] The night of September 11th, 2001, [...] one of the first things I said was I said to the people of my city and then probably to the people of America that we should not engage in group blame. We shouldn't do the thing that we're being attacked for. We shouldn't blame an entire group of people for the horrible acts of a few people who have distorted a great religion. They have turned it into an ideology of hatred and an ideology of violence.

[External Link \(http://www.presidency.ucsb.edu/ws/index.php?pid=76069#axzz1KARiILrG\)](http://www.presidency.ucsb.edu/ws/index.php?pid=76069#axzz1KARiILrG)

Topics (#t1a)

[Faith in the 2008 Election \(/resources/faith-in-the-2008-election\)](#)



12/21/2016

Rudy Giuliani on Distinguishing between Islam and Islamic Terrorism in the St. Petersburg Republican Presidential Debate

[Islam as an Issue \(/resources/islam-as-an-issue\)](#)



## Tags

[terrorism \(/search?q=terrorism\)](#)

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# Giuliani buries lib mouthpiece Kucinich in head-to-head on 'Hannity'

February 19, 2015 | Carmine Sabia (<http://www.bizpacreview.com/author/carmine-sabia-jr>) |

Former New York City Mayor **Rudy Giuliani** and former U.S. Rep. **Dennis Kucinich** went head to head Wednesday over their vastly different views on fighting Islamist terrorism.

And the liberal Kucinich came out the loser.

The men appeared on Fox News' "Hannity" on the heels of the State Department spokeswoman Maria Harf's suggestion that a good method to defeat radical Islam would be getting the terrorists gainful employment.

Host **Sean Hannity** listed some of the atrocities committed by the Islamic State and Kucinich responded by essentially blaming the U.S. for the growth of radical Islam.

"You have to remember that both al-Qaida and ISIS have grown as a result of U.S. intervention," Kucinich said before Hannity interrupted him and listed several terrorist attacks that occurred before America started fighting back.

"What I'm saying is that the United States has to be very careful. We got sucked into Iraq, a nation that had nothing to do with 9/11," he said. "We destabilized Iraq and gave an opening for al-Qaida and later ISIS."

Before his segment was over, the former Ohio congressman — a proud member of his party's liberal wing — offered the most telling insight into the minds of many on the left when it comes to the war on terror.

"They're not gonna kill us," Kucinich said. "That is not going to happen again."

Not surprisingly, Giuliani had a very different opinion.

"I find Dennis to be terribly ignorant about the history of Islamic extremist terrorism," he said.

"What we did for 30 years is encourage them to come and kill us and we would do nothing about it," he said, after listing several attacks where the U.S. and European nations did not respond aggressively to Islamic terrorist attacks. "When President Bush struck back, that is the first time we drove them back."

Giuliani made his final point on the Obama administration's lackluster response to the global threat of Islamic terrorism.

"This is becoming exceedingly dangerous," he warned. "We are encouraging them to come and hit us."



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# THE NATIONAL MEMO

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July 11, 2013

## Giuliani Slams Counter-Terrorism 'Political Correctness'

By AFP

WASHINGTON (AFP) – Rudy Giuliani, New York's mayor during the 2011 terror attacks, said U.S. "political correctness" may have contributed to failures in stopping Islamist extremists like the accused Boston bombers.

Speaking hours before suspect Dzhokhar Tsarnaev appears in court to face charges connected to the deadly Boston Marathon bombings, Giuliani said failure to recognize the persistent Islamist threat leaves the United States in a "very, very dangerous state of denial."

"You can't fight an enemy you don't acknowledge," Giuliani told a House panel, warning that the United States is failing to directly address the nature of the threat. "In order to confront this threat effectively, we have to purge ourselves of the practice of political correctness when it goes so far that it interferes with our rational and intellectually honest analysis of the identifying characteristics that help us to discover these killers in advance."

Some Republican lawmakers say President Barack Obama has sought to avoid blaming extremist threats to America on religious zealotry.

They believe the administration has wrongfully toned down the nature of the threat, including from homegrown extremism fueled by jihadist rhetoric, and warn that attacks such as the 2009 Fort Hood massacre in which a U.S. Army psychiatrist shot dead 13 people should be identified as an Islamist-driven terrorist attack.

Giuliani, a Republican who briefly ran for president in 2008 on the strength of his handling of 9/11, pointed to U.S. failures to connect the dots about the Tsarnaevs, two ethnic Chechen Muslim brothers living in the US northeast.

He said, "There would have been a much greater chance of preventing Fort Hood and possibly... the Boston bombings if the relevant bureaucracies had been less reluctant to identify the eventual killers as potential Islamic extremist terrorists."

He added: "The fear of incorrectly identifying (Tamerlan) Tsarnaev as a suspected Muslim extremist might have played a role in not taking all the steps that seemed prudent given his suspicious behavior," including monitoring him more closely when he returned from Boston to Russia, where authorities believe he may have met with underground extremist groups.

The ex-mayor's testimony comes as 19-year-old Dzhokhar Tsarnaev appears in court for the first time since his arrest for the April bombings that killed three people.

As Giuliani sounded the political correctness alarm, a former director of the National Counterterrorism Center, Michael Leiter, stressed that U.S. counter-terrorism efforts have worked.

"Our record is far from perfect, but it's pretty good," he said, arguing that the 18 deaths from terror attacks on US soil since 9/11 are far fewer than what many Americans would have predicted years ago.


Leiter pointed to vastly improved intelligence gathering, expanded checks at ports and border points, and broader community engagement, especially in the Muslim American community.

But Republican Michael McCaul, chairman of the House Homeland Security Committee where Giuliani testified, said U.S. security forces dropped the ball on the Tsarnaevs.

"We did not see it coming," he said of the Boston attack, adding that poor information sharing was partly to blame. The FBI in particular investigated Tamerlan Tsarnaev but did not reopen his case after he returned from abroad.

McCaul also warned that the Obama administration was seeking to return to a pre-9/11 approach to combatting terrorism - a policy McCaul said is perpetuated by its misguided "narrative that the conflict with radical Islamists is ending."

#### The National Memo

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